

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK D. DANIELS,

Defendant-Appellant.

UNPUBLISHED

April 5, 2002

No. 223712

Wayne Circuit Court

LC No. 98-012622

AFTER REMAND

Before: Saad, P.J., Bandstra, C.J., and Whitbeck, J.

PER CURIAM.

Following a bench trial, the trial court convicted defendant Frederick Daniels of two counts of first-degree criminal sexual conduct (CSC I),¹ but acquitted him of two other counts of CSC I and possessing a firearm during the commission of a felony (felony-firearm).² Daniels appealed by right to this Court, arguing for reversal on several grounds. We determined that all but three of the issues Daniels raised did not merit reversal.³ However, the record made it impossible for us to address whether the convictions of CSC I, which required proof that Daniels used a “weapon or an article fashioned in a manner to lead the victim to reasonably believe it to be a weapon,” but acquittal of felony-firearm were inherently contradictory, requiring reversal. Nor could we decide whether the trial court’s factual findings supported the guilty verdict for the CSC I charge in Count III when the trial court’s remarks technically indicated that it found that he had a weapon while committing Counts I and II, but not Count III.⁴ With these issues unresolved, we could not answer whether any errors in this case, considered cumulatively, merited reversal. Following *People v Jackson*,⁵ we remanded this case to the trial court so that it could clarify its factual findings.

¹ MCL 750.520b(1)(e).

² MCL 750.227b.

³ *People v Daniels*, unpublished opinion of the Court of Appeal, rel’d December 7, 2001 (Docket No. 223712).

⁴ MCL 750.520b(1)(e).

⁵ *People v Jackson*, 390 Mich 621, 627-628; 212 NW2d 918 (1973).

On remand, the trial court clarified its findings concerning each charge against Daniels. The trial court found that, despite the victim's testimony of digital-anal penetration, contradictory testimony concerning what she reported to the police following the assault left a reasonable doubt regarding Count I. However, the trial court found the victim's testimony that Daniels had what appeared to be a silver gun and that he performed cunnilingus on her and forced her to perform fellatio on him credible, meriting conviction for Counts II and III. As for Count IV, the trial court found a reasonable doubt regarding whether Daniels actually penetrated the victim. Finally, addressing the felony-firearm charge in Count V, the trial court clarified that the victim's testimony clearly demonstrated that she thought that Daniels had a weapon, which she believed to be a "silver gun." However, the victim was not able to see the alleged gun very well, which led the trial court to find that, though Daniels had a weapon or something that the victim reasonably believed to be a weapon, the prosecutor had not proved beyond a reasonable doubt that this article was a firearm, as the felony-firearm statute requires.

Having had the opportunity to consider the trial court's clarified findings, we see no inconsistency in the trial court's convictions on Counts II and III, but acquittal on Count V. MCL 750.520b(1)(e) only requires evidence of a weapon or something that reasonably led the victim to believe that it was a weapon. In contrast, felony-firearm entails a defendant carrying or possessing a weapon while committing or attempting to commit a felony.⁶ Because "firearm" has a specific statutory definition, not just any weapon or item fashioned similarly to a firearm satisfies the felony-firearm statute.⁷ Given the victim's clear testimony that she believed Daniels to have a weapon, the evidence and the trial court's findings supported the two CSC I convictions. However, as the trial court also expressed, there are questions concerning whether the weapon Daniels had was actually a firearm, which demanded acquittal of the felony-firearm charge. Furthermore, any confusion in the trial court's original findings concerning whether it was convicting Daniels of the CSI charges in Count I or Count III is no longer cause for concern given the trial court's explanation of its findings on remand.

Of the many issues Daniels raised in this appeal, we concluded that only one involved an error. However, that error was harmless.

Affirmed.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ William C. Whitbeck

⁶ MCL 750.227b.

⁷ See *People v Schofield*, 124 Mich App 134, 136; 333 NW2d 607, rev'd on other grounds 417 Mich 988 (1983), citing MCL 8.3t.